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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY CALDERON,

Defendant and Appellant.

E063434

(Super.Ct.No. FWV1200788)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Daniel J. Kessler, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

On July 26, 2012, an information charged defendant and appellant Johnny Michael Calderon with eight counts of forcible rape of a child over the age of 14 years (Pen. Code,¹ § 261, subd. (a)(2); counts 1-8); two counts of sexual penetration by a foreign object upon a minor over the age of 14 years by force or duress (§ 289, subd. (a)(1)(C); counts 9-10); two counts of forcible oral copulation with a minor over 14 years of age (§ 288a, subd. (c)(2)(C); counts 11-12); and eight counts of lewd and lascivious acts with a child (§ 288, subd. (c)(1); counts 13-20).²

On June 21, 2013, pursuant to a negotiated plea agreement defendant pled nolo contendere to violating section 289, subdivision (a)(1)(C), sexual penetration by a foreign object upon a minor over the age of 14 years by force or duress (count 9); section 288a, subdivision (c)(2)(C), forcible oral copulation with a minor over 14 years of age (count 11); and section 288, subdivision (c)(1), lewd and lascivious acts with a child (count 13).

On July 24, 2013, defendant moved to withdraw his plea. However, after discussing the issue with the trial court, defendant changed his mind and chose to go forward with sentencing. Thereafter, the trial court granted the prosecutor's motion to dismiss the other 17 charges, and sentenced defendant to the negotiated term of nine years eight months in state prison.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The information alleged seven counts against Johnny Andre Calderon (counts 21-27).

On January 13, 2015, defendant wrote a letter to the trial court asking to be resentenced. The letter referenced the newly enacted proposition 47, and included an article about the law's provisions. The court construed the defendant's letter as a petition for resentencing under section 1170.18.

On February 27, 2015, the trial court summarily denied defendant's petition on the ground that he was ineligible for resentencing due to the nature of the charges in his case. (§ 1170.18, subd. (a).) On April 24, 2015, defendant notified the trial court that he wished to appeal the trial court's ruling on his petition; this notice has been deemed as defendant's notice of appeal.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

KING
Acting P. J.

CODRINGTON
J.